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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,089	11/04/2003	Richard Marion Czerwiec	135516CNT	4431
24587 7590 06/16/2008 ALCATEL LUCENT INTELLECTUAL PROPERTY & STANDARDS 3400 W. PLANO PARKWAY, MS LEGL2 PLANO, TX 75075			EXAMINER CHERY, DADY	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 06/16/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/701,089

**Applicant(s)**

CZERWIEC ET AL.

**Examiner**

DADY CHERY

**Art Unit**

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04/03/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/55/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This communication is responsive to the amendment filed on 10/03/2007.

### ***Response to Arguments***

1. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 9 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6687231 in view of Wiher ( US patent 6,081,530) . Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 in the instant application

discloses same structure of the patented case such as plurality of encoder (line card), a plurality of signals.

Claim 1	Claims 9
Present application	Patented case
<p>method for a system including a plurality of encoders each for receiving a first signal and encoding to generate a respective second signal for sending to a respective subscriber, the method comprising:</p> <p>receiving, in each encoder, the first signal from a first source, while testing a signal, path between a second source and the encoders receiving, in each encoder, a third signal from the second source; generating, from each encoder,, a fourth signal based on the third signal; receiving and examining the fourth signal at the second, source; and subsequently receiving the first signal from a the second source .</p>	<p>6. A method for a system including a plurality of line cards each having at least one encoder and each for receiving a first downstream signal and encoding to generate a respective subscriber downstream signal for sending to a respective subscriber, the method comprising: receiving, in each line card, the first downstream signal from a first source over a first downstream signal path; sending, from at least one line card, a first upstream signal to the first source over a first upstream path; testing a second downstream path from a second source to the at least one line cards and a second upstream path from the at least one line cards to the second source; and if a failure is detected along the first</p>

	<p>downstream signal path or the first upstream signal path and a failure is not detected along the second downstream signal path or the second upstream signal path, a second receiving step of receiving the first downstream signal from the second source, wherein a multiplexing process is used to enable the line cards to share the first upstream signal path and the same multiplexing process is used to enable the line cards to share the second upstream signal path, so that the testing of the second upstream path occurs in synchronism with the sending of the first upstream signal by each respective line cards.</p> <p>9.The system of claim 6 wherein the sender in each line card includes a generator that generates a test upstream signal in response to a signal received from the second circuit card, to send the</p>
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	test upstream signal on the second upstream signal path .
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The patented case does not clearly teaches a fourth signal based on the third signal;

receiving and examining the fourth signal at the second, source; and subsequently receiving the first signal from a the second source .

However, Wiher teaches a fourth signal based on the third signal; receiving and examining the fourth signal at the second, source; and subsequently receiving the first signal from a the second source (**Fig. 4, Col. 3, lines 34 -43 Col.8, lines 5 -15, Col. 9, lines 45 -68**).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a fourth signal based on the third signal; receiving and examining the fourth signal at the second, source; and subsequently receiving the first signal from a the second source for the purpose of receive a status signal from the backplane and provide the status signal to each backplane interconnection circuit ( Col. 4, lines 39 -42).

## **2. Claim Rejections - 35 USC § 102**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Wiher et al. (US Patent 6,081,530, hereinafter Wiher).

Regarding claim 1, Wiher discloses a method for a system including a plurality of encoders (**Fig.4, 5 and 6**) each for receiving a first signal and encoding to generate a respective second signal for sending to a respective subscriber (**Col.7, lines 50 -57**), the method comprising:

receiving, in each encoder, the first signal from a first source, while testing a signal, path between a second source and the encoders (**Fig. 6, Col. 8, lines 15 -18 and Col. 9, lines 55- 56**);

receiving, in each encoder, a third signal from the second source;  
generating, from each encoder, a fourth signal based on the third signal;  
receiving and examining the fourth signal at the second, source; and  
subsequently receiving the first signal from a the second source (**Fig. 4, Col.8, lines 5 - 15, Col. 9, lines 45 -68**).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DADY CHERY whose telephone number is (571)270-1207. The examiner can normally be reached on Monday - Thursday 8 am - 4 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ricky Ngo/  
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